IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5621 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIMATLAL RANCHHODDAS

Versus

STATE OF GUJARAT

Appearance:

MR JASHBHAI P PATEL for Petitioner

None for the Respondents.

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 28/07/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 227 of the Constitution of India against the notice of Demand dated 28.12.1982 issued by the Tax Officer, Regional Transport Office, Rajkot (Annexure 'D') which was confirmed in appeal, being Appeal No. 1 of

1983, by the Director of Transport & Appellate Authority, Lal Darwaja, Ahmedabad.

2. The petitioner was the owner of ombibus contract carriage which was permitted to ply on hire or reward under Permit No.6 issued under section 63 (7) of the Motor Vehicles Act, 1939. The petitioner approached for renewal of permit, and the officer, on inspecting the books, found that the petitioner was liable to pay Rs.3128-05 towards passenger tax. It appears that the petitioner paid less amount of passenger tax for the period from November 1981 to April 1982. Vide Annexure 'C', the petitioner was conveyed that he was liable to pay the amount of passenger tax of Rs.3128-05 with 25% penalty and 1% interest. Notice in the prescribed from VI under the provisions of the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 (hereinafter referred to as the Taxation Act) was also given. The petitioner was required to pay the tax on passengers under the provisions contained in the Taxation Act. Return is required to be filed by every licence holder under the provisions of the Taxation Act in the manner prescribed under section 4 of the Taxation Act. Section 6 contemplates the procedure where no returns are submitted. Section 7 of the Act is the relevant section, which reads as under:-

> 7. Fares escaping assessment.- If, for any reason, the whole or any portion of the tax leviable under this Act for any month has escaped assessment, the Tax Officer may, at any time within, but not beyond one year from the expiry of that month, assess the tax which has escaped assessment, after issuing anotice to the operator and making such inquiry as the officer may consider necessary.

3. Thus, it is very clear that the instant case is not covered under section 6 of the Taxation Act, but it is covered under section 7 of the Taxation Act. The petitioner already submitted a Return, which was accepted. However, lateron it was found that there was escapement in assessment, and hence the proceedings were initiated. Along with Annexure 'C', notice in the prescribed form, Annexure 'D', was also forwarded.

4. Against the aforesaid decision at Annexure 'D', an appeal was also preferred before the Director of Transport & Appellate Authority, Lal Darwaja, Ahmedabad, being Appeal No. 1 of 1983. The Appellate Authority considered the submissions made by the learned counsel

appearing for the petitioner. It was contended before the Appellate Authority that the officer cannot make second assessment. It was contended before the Appellate authority that once the officer has accepted the returns, he has no power to make further assessment. After inspecting the original papers of the appeal. the Appellate authority hearing the appeal found that the said submission was without any merit. After inspecting the records before it, the appellate authority recorded a finding that the Tax Officer and Regional Transport Officer, Rajkot had sent the notice of demand in the prescribed form, and besides sending the demand notice, the appellant was also personally heard.

5. Mr. Patel, learned advocate appearing for the petitioner submitted that infact no show cause notice has been given in Form V, and, therefore, the orders passed by the assessing officer as well as by the appellate authority, are required to be quashed and set aside.

6. This petition is heard under Article 227 of the Constitution of India; There are self-imposed restrictions while exercising powers under Article 227. The Court is not hearing this matter as if it is an appeal. In the instant case, the appellate authority which inspected the records has found that before issuance of Demand opportunity was given and the petitioner, and was heard in the subject matter. Therefore, the submission of Mr. Patel that notice has not been issued before issuance of demand at Annexure 'D', cannot be accepted because the Respodnent, before issuance of demand notice at Annexure 'D' has heard the petitioner, as found by the appellate authority.

6.1 The Apex Court in the case of MOHD. YUNUS vs. MOHD. MUSTAQUIM reported in AIR 1984 SC 38 held as under:

> "A mere wrong decision without anything more is not A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.
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> The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error

> apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

7. In the instant case, there was no failure on the part of the Appellate Authority in exercising jurisdiction nor did it act in disregard of principles of natural justice; The procedure adopted by it was also not contrary to the procedure established by law. In view of this, this Court would not like to interfere. Rule is discharged. No order as to costs.

(B.C. PATEL, J.)

csm./